AN INQUIRY INTO THE ORIGIN and LIMITATIONS OF THE Feudal Dignities of SCOTLAND.

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By WILLIAM BORTHWICK, Esq;

——— *Genus unde Latinum,*
Albanique patres, atque altæ mœnia Romæ. Æn. i. 10.

From whence the race of Alban fathers come,
And the long glories of majestic Rome. Dryden.

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MUSEUM
BRITANNICUM

TO

THE RIGHT HONOURABLE,

CHARLES

LORD BINNING,

THE FOLLOWING PAGES

ARE DEDICATED

BY

HIS LORDSHIP's

MOST OBEDIENT SERVANT,

WILL. BORTHWICK.

TO

THE RIGHT HONOURABLE

CHARLES

LORD BANKING

THE TOPOGRAPHICAL TRACTS

AND DESCRIPTIONS

OF

HIS LORDSHIPS

MOST OBEDIENT SERVANT

WILL. DUGDALE.

To the PUBLIC.

THE following pages are intended to exhibit a view of the limitations of the ancient dignities of SCOTLAND. Perhaps ſome points ſet forth may be reckoned *new;* however, they are ſo *old*, and were once ſo well underſtood in Scotland, that they would have been eaſily comprehended by the moſt illiterate three hundred years ago. A tedious preface to a ſmall treatiſe would be truly prepoſterous. The reader, it is hoped, will conſider theſe pages with impartiality, and ſuperſede forming any judgement on the ſubject until he makes a thorough ſearch into thoſe records from which the ſtate of facts are taken.

Crookſtown, May 16. 1775.

AN

INQUIRY

INTO

The Origin and Limitations of the FEUDAL DIGNITIES of SCOTLAND.

NO nation exceeds Scotland for the antiquity of its Noble families; at the ſame time the inhabitants of no country have been more unfortunate in the preſervation of their ancient writings. The public records of Scotland now remaining, are vaſtly defective; and the private writings of the country, excepting a few in the hands of ſome individuals, are entirely loſt. To aſcertain when honours were firſt introduced into this country, and what families firſt enjoyed dignities, is therefore

 impoſſible.

impoſſible. However, from ſuch records and private-family documents as have eſcaped the injury of time, it is poſſible to diſcover, that peerages have been enjoyed in Scotland at a very early period. From theſe remains of antiquity, too, we may diſcover the limitation of the ſucceſſion to thoſe ancient peerages.

As far back as peerages can be traced, they are territorial, founded upon a tract of land erected into a lordſhip or an earldom. A mere perſonal peerage, in the ancient hiſtory of Scotland, never was known. In England too, even ſo late as the 1500, we may obſerve, that when the Kings of that country thought proper to raiſe a perſon to the dignity of the peerage, they always granted ſomething along with it; a thing as uſeful in life as a title. They allowed the peer either a portion of land, or a ſalary, to ſupport the dignity of the peerage.

When the Kings of this country ennobled a perſon, they either granted a charter of erection of his land-eſtate into that rank which they meant the perſon to enjoy, as into a *comitatus*, or a *dominium*; or, in parliament, they girt him with a ſword, declaring,

declaring, at the ſame time, the titles and rank which it was intended the party ſhould enjoy. If the dignity was conferred by erection of the land-eſtate, the King mentioned in the charter by what ſtyle the new peer ſhould be known. And it is obſervable, that after a family was once ennobled, although the King *de novo* erected the land-eſtate into a *dominium*, or a *comitatus*, yet he did not then recapitulate the titles of the family, nor expreſs any right of ſitting in parliament. Theſe were unneceſſary; becauſe it was always underſtood, that the peerage and the eſtate were to deſcend to the ſame ſeries of heirs. When a peer reſigned his earldom or lordſhip in the King's hands, in favour of himſelf, and a certain ſeries of "*heirs-male*," it was unneceſſary that the King, in the new charter of the eſtate, ſhould ſay, that the title of honour founded upon the land-eſtate was limited to *heirs-male*.

The earlieſt appearance of peers in Scotland is under the deſcription of *Lord Barons*. But ſome of thoſe families who originally enjoyed that rank of peerage in this country, having become extinct, and

others having been advanced to the rank of Earls, the preſent Lord Barons of this kingdom owe their nobility to a period much later than the Earls.

In the reign of Malcom III. Goſpatrick Earl of Northumberland fled from England to avoid the reſentment of the Conqueror, and took refuge with our King Malcom, who gave him the lands of Dunbar and Colbranſpath in Eaſt Lothian. In the reign of David II. Patrick Dunbar reſigned his eſtates of Dunbar and March in the King's hands; upon which the King granted a charter of the eſtate to George, the ſon of Patrick, " tenend. et " habend. dicto Georgio Dunbar, et hæ- " redibus ſuis, de nobis, &c. in unum " integrum et liberum *comitatum* *," &c.

George Dunbar was afterwards ſtyled by King David, " Dilectus conſanguineus " noſter Georgius, *Comes Marchiæ* †."

The family of Dunbar were promiſcuouſly deſigned Earls of Dunbar, and of March.

In a parliament held at Scoone, 5th Fe-

* Charter on record, b. 1. n. 196. an. reg. 39. 25th July.

† Charter, b. 1. N° 244. 8th February.

bruary

bruary 1283, the following peers and great men of the kingdom were preſent.

Patrick Earl of Dunbar,
Alexander Cummin Earl of Buchan, Conſtable of Scotland,
Malice Earl of Strathern,
Malcolm Earl of Lennox,
Robert Bruce Earl of Carrick,
Donald Earl of Marr,
Gilbert Earl of Angus,
Walter Earl of Monteith,
William Earl of Roſs,
William Earl of Sutherland,
Magnus Earl of ——— aclin *,
Duncan Earl of ——— †,
John Earl of Atholl.

Theſe were all territorial peers. Their peerages were founded upon their dignified fiefs. They were all deſcendible to the perſons who were the heirs of the inveſtitures of their land-eſtates.

If any of thoſe Lords died, the ſucceſ-

* This imperfect word muſt be a miſtake in the record. If I might be allowed a conjecture, I think it ſhould have been "*Orcaden.*" Magnus was the ſurname of the Earl of Orkney at this period.

† Earl Duncan of Fife muſt have been the perſon meant here.

ſion

ſion to his honours was to be regulated by the rule of ſucceſſion to his land-eſtate, upon which his titles were founded. If any of them died without iſſue, the peerage went along with their family-eſtate to the neareſt heir of their inveſtitures, whether that heir was deſcended from the body of the perſon firſt ennobled of the family or not. That peerages without limitation ſhould be limited to the deſcendents of the perſon firſt ennobled, is an abuſe too great to be offered to the common ſenſe of mankind.

In Scotland it ſeldom happened, that the peer in poſſeſſion wanted repreſentation ſprung from himſelf. Many adventitious circumſtances concurred favourable to the peers of ancient times on this head. In a country where every ſpecies of luxury and extravagance was hated and deteſted, the old lord had no occaſion to intereſt himſelf in the matrimonial connections of the ſon. The inconveniencies ſenſibly felt in modern times, of too many generations in the direct line, could not occur in thoſe days: on the contrary, what would be diſagreeable from theſe circumſtances to us in modern times, afforded

the

the moſt comfortable reflections to our anceſtors.

From theſe circumſtances, a ſucceſſion to a peerage rarely opened to any branch beyond the line of the deſcendents of the firſt peer. However, as no rank nor ſituation in life is exempt from common accidents, ſometimes it happened, that there were no repreſentatives deſcended from the firſt peer exiſting at the demiſe of the peer in poſſeſſion. The queſtion then aroſe, What became of the peerage? A previous queſtion, however, muſt have been, "How ſtood the limitation of the earldom "or lordſhip which intitled the deceaſed "peer to ſit and vote as a lord of parliament?"

If it appeared, that the *comitatus* or *dominium* held by the deceaſed peer *in libero comitatu*, or *in libero dominio*, was ſettled to heirs-male, then the perſon who under that character proved his propinquity, was acknowledged heir of the peerage, as well as heir of the land-eſtate.

If we turn our eyes towards our ſouthern neighbours, we will obſerve, that with them ancient peerages were rarely limited: they

they moſt commonly went to the heir of the deceaſed.

From whence, then, have we received it as a rule, and as an infallible one too, that in Scotland peerages not conſtituted by patent are deſcendible only to the heir-male of the body of the perſon firſt ennobled? The queſtion has never in modern times yet occurred, Whether or not a Scotch peerage without patent, can deſcend to collateral heirs beyond the iſſue of the perſon firſt ennobled? but the fact has ſeveral times occurred in Scotland. A perſon enjoying a land-eſtate limited to certain heirs-male, and a title of honour founded on that eſtate, has died without iſſue; and the land-eſtate, together with the peerage, has been taken up and enjoyed by the heir-male, though not ſprung from the body of the firſt peer, without challenge or objection from any party having intereſt.

Since the union of the two kingdoms, from political motives, a number of people have been led to expreſs extravagant notions with regard to the limitation of the peerages of Scotland. Opinions, too, have been propagated upon this ſubject,

from motives of intereſt and envy. The preſent peers of any kingdom have an evident intereſt that their number ſhould be *few*; the bulk of the commoners of a country are prejudiced againſt ſuch individuals as ſet up pretenſions to a *rank* which the body of the people can never arrive at; and the few individuals who would wiſh to form their judgement on the ſubject upon juſt principles, have it not in their power to know the facts upon which their opinion ought to be founded.

In the year 1221, when Alexander King of Scotland ſettled Jedworth-foreſt, Haſſendean, and Laſſuden, in Roxburghſhire, on his conſort Johanna, the ſiſter of the King of England, there were two Earls witneſſes to the deed of ſettlement;

Earl Patrick, and

William Cummin, Earl of Buchan, Juſticiar of Scotland *.

There are no other peers witneſſes to this deed: ſo that the rank of Lord Barons is not diſcoverable from it. We are,

* Original inſtrument in the tower of London, dated in 1221.

however, certain, that before this period there exiſted a peer of the Sutherland family, by the ſtyle of *William Lord Sutherland* *.

The Earl Patrick here named muſt have been Earl of Dunbarre and March. He muſt have had an earldom, although it is not mentioned in this tranſaction. At a time when there were few Earls, they would be diſtinctly known by their Chriſtian names, as Earl Gilbert, Earl Patrick, Earl Duncan, &c.

Thoſe peerages founded on territory, always went to the heir of the territory, whether heir-male or heir-general.

From the defect of records, it is impoſſible to make up a correct liſt of the perſons who enjoyed the rank of Earls in the twelfth and thirteenth centuries. The moſt full liſt of Earls is that which I have already mentioned at the parliament 1283. In ſeveral inſtruments relating to Scotland in the tower of London, downwards to the 1300, ſome few of thoſe Earls preſent at Scoone are named.

* Confirmation, dated in 1214, produced in the claim of the peerage of Sutherland.

I ſhall now go on to conſider the other rank of peerage, the Barons.

It has hitherto been alledged by lawyers, and others who have had occaſion to mention this order of peerage, that it had its riſe in the reign of James I. of Scotland, who returned from England in 1424; and it has been ſet forth in law-papers, that this order of men were unknown in Scotland until the reign of that King.

There does not exiſt in the public records of Scotland any patent in King James's reign conſtituting any of the anceſtors of our preſent Barons peers; ſo that the lawyers of this country could not have diſcovered the origin of thoſe peerages from record. From whence their origin can be diſcovered, I am yet to learn. I treat this point with very great diffidence; and if I ſhall err, I will be proud, upon conviction of my miſtakes, to confeſs them.

In order to aſcertain this point, I propoſe to arrange the conſideration of it under two heads.

1*ſt*, A review of ſuch ancient inſtru-

ments as are extant, in which perſons of this rank of peerage are mentioned.

2*dly*, A review of the laws of James I. that the conſtitution of the Scotch parliament may be diſcovered.

FIRST HEAD.

Review of ancient inſtruments.

IN the year 1292, the King of England being in the caſtle of Stirling, receiving *homage* from the landed perſons of Scotland, there were preſent a number of the nobility. Among the nobility, appears John Comyn Lord Badenough.—— The words in the original run thus: "Preſentibus ibidem nobilibus viris Do-"minis Johanne Comyn Domino Bade-"nogh," &c. *

If this perſon was not a peer, why is he called *a Noble Lord?* and if he was only a commoner, where was the occaſion of deſcribing him in any form different from the other gentlemen mentioned along with him?

* Rymer's Fœdera, vol. 2. p. 571.—— In p. 575. he is ſtyled *Seigneur de Badenogh.*

A number of examples of this kind, where perſons are deſcribed to have been *Lords*, occurs in writings of the thirteenth century. To recite them would be tedious. The reader who is curious of inveſtigating this point, will eaſily ſatisfy himſelf, by looking at the teſting clauſes of a few ancient charters relating to Scotland, either in the tower of London, or in the record of the great ſeal at Edinburgh.

Every perſon in Scotland whoſe family had once been ennobled, holding lands of the King *in libero dominio*, had a right to be ſtyled *Lord*.

When a perſon in ancient times appeared in parliament, if he held his lands *in libero comitatu*, he was marked down *Comes*; if he held his lands *in libero dominio*, he was marked *Dominus*; if he held them only *in libera baronia*, he was marked *Baro*.

If, then, it ſhall appear, that lands were held *in libero dominio* prior to the reign of James I. there muſt have been *Lords* in Scotland before the reign of that prince.

In a number of inſtruments long before the year 1424, the ranks of men in Scotland

are deſcribed thus: "*The Earls, Prelates,* "*LORDS, Barons, and great men of the* "*kingdom* *."

A charter by William I. dated in 1171, of the earldom of Marr, to Morgund, the ſon of Gillocherus Earl of Marr, runs thus: "Willielmus Rex Scotorum univer- "ſis Epiſcopis, Comitibus, Abbatibus, "Prioribus, *Baronibus*, Militibus, Thanis, "et Præpoſitis, et omnibus aliis probis "hominibus totius terræ ſuæ, tam clericis, "quam laicis, ſalutem eternam in Domi- "no," &c.

This inſtrument is to be found in Selden's *Titles of Honour*, p. 848. If it proves the exiſtence of Earls and Abbots in 1171, it is equally good evidence of the exiſtence of *Barons*, as a higher rank than Knights.

In *Leland*, vol. 2. p. 9. there is an abſtract of a book intitled, *How England ſhould have homage and fealty of Scotland.* There occurs the following paſſage

* "Prælatis, Comitibus, *Baronibus*, Magnatibus, "Proceribus, exiſtentibus tunc ibidem."—— *Original inſtrument in the tower of London, dated in* 1292,—*tranſcribed into Rymer's* Fœdera Angliæ, *vol.* 2. *p.* 597.

in

in it: "Then Edward Baliol drew to him "divers *Lords* and Gentlemen," &c.

Although the earlieſt appearance of nobility in any of the families of our preſent Barons is only in the beginning of the fifteenth century; yet it is highly probable that their anceſtors arrived at that dignity long before that period. Though we cannot diſcover a Lord Sommerville, Gray, or Borthwick, earlier than about the year 1424, we are not therefore to conclude, that thoſe perſons were newly ennobled at the period when we diſcover them on record. It was adjudged by the Houſe of Lords, in the year 1762, that there exiſted a William Lord Borthwick, a peer of Scotland, in the year 1421; and it appears from an inſtrument in the tower, that the peerage of Sommerville exiſted in the year 1423.

Nor is it any objection to what I have ſuggeſted, that thoſe perſons whom I mention as peers have, at later periods, been deſcribed ſimply by their land-eſtates, without any mention of their dignities. For it appears from a decree of parliament, dated 17th March 1429, lib. 3. N° 18.

N° 18. of the record, that the following *Lord Barons* were preſent;

Abercorn,
Dalkeith,
Erſkine,
Lochow,
Gordon,
Dirleton,
Sommerville,
Maxwell,
Montgomery.

Theſe perſons were Lords of parliament beyond all doubt; yet it alſo appears from record, that at a later period ſeveral of them were deſigned ſimply by their land-eſtates.

In 1439, Lord Dalkeith is deſigned in a charter from the King, "James Douglas "of Dalkeith *."

In 1442, Lord Lochow, in his foundation-charter of the collegiate church of Kilmun, is deſigned, "Duncanus Camp-"bell de Lochow, Miles †."

In 1430, Lord Montgomery, in his

* Lib. 5. N° 135.

† Foundation-charter by Duncan Campbell, dated in 1442.

commiſſion

commiſſion from the King to be Governor of Kintyre and Knapdale, is ſimply deſcribed, "Alexander Montgomery of "Ardroſſan *."

In 1434, the Lord Sommerville, in a charter mortifying ſome lands for pious uſes, is deſcribed, "Thomas Sommerville "of Carnwath;" and *Lord Maxwell*, who is a witneſs to it, is only deſigned, "Her-"bert Maxwell of Carlaverock."

In the record of parliament 1434, Lord Dirleton is only marked, "Walterus de "Halyburton et Dirleton."

From theſe facts it is clear, that a perſon who was truly a *peer* might be ſometimes deſigned in the manner of a commoner; and hence it follows, that though the firſt Lord Sommerville, for example, diſcoverable on record, is in the year 1423; yet that perſon may have been a peer much earlier: nor, from the manner of his deſignation, is it impoſſible but that he may have been the ſon of a former Lord.

A liſt of Lords before the year 1421 is difficult to diſcover. However, from the imperfect ſcraps of records remaining, we

* Lib. 3. N° 60.

are certain of the exiſtence of that order as early as the year 1300 *.

Suppoſing a liſt of a thouſand names under the character of Lords of Parliament of Scotland, anterior to the thirteenth century, to exiſt, it could afford no ſtronger proof that ſuch a rank then exiſted, than a ſmaller number well atteſted. Though, through the fatality of time, the inveſtitures of many of our ancient lordſhips are loſt; yet there remains irrefragable evidence upon the ſubject.

There exiſted, before the reign of James I. the following *Lord Barons* of Scotland, at different periods; it is impoſſible to give an account of them exiſting at one time.

William Lord Sutherland,
Lord Lyndſay and Crauford,
Lord Badenough,
Lord Strathbolgie,
Lord Douglas,
Lord Brechin,
Lord Galloway,
Lord Liddeſdale,
Lord Graham of Kincardine.

* Rymer, vol. 2. p. 597.

It is certain that thoſe others muſt have been univerſally acknowledged as *peers*, by the ſame authority as Lord Graham is acknowledged, which was no leſs than the ſupreme legiſlative authority of this kingdom. The whole of thoſe perſons I have named as peers, are proved by inconteſtable evidence to have been many times deſcribed under that character. To recite the different inſtruments relating to them would be very tedious. I ſhall only ſtate evidence, that the Noble family of Montroſe enjoyed the rank of peers in this country *before the return of James I. from England.*

If it is proved that any one family enjoyed the rank of Lords of Parliament before that period, no prejudice can ariſe to the other Noble families of the kingdom from the ſuppoſition that no ſuch order of peers then exiſted. If it ſhall appear that the family of Montroſe enjoyed the rank of *Lord Barons* before the year 1424, it ought not henceforth to be reckoned impoſſible that *the preſent Lord Barons* ſhould derive their dignity from a coeval period. The imperfection of our records about that time, is well known to every perſon who

has the ſlighteſt acquaintance with them. If ten inſtruments exiſted in the year 1400, it is no unreaſonable preſumption to preſume that nine of the ten are loſt.

On the 1ſt of September 1413, Henry V. of England grants a letter of ſafe conduct to Walter Biſhop of Brechin, William Lord Graham *, and Robert of Lany †.

That Lord Graham muſt have been a *peer* in the ſtricteſt ſenſe of the word, is plain. The very next paper on the ſame record, is a ſafeguard in favour of James Hamilton of Hamilton, dated the 6th of the ſame month: but the manner of his deſignation is very different from that of *Graham*. He is deſigned, *Jacobum de Hamilton*.

In an inſtrument, copied into Rymer's Fœdera, vol. 9. p. 101. the following peers of Scotland, in 1414, beſides *Lord Graham*, are mentioned.

* He is deſigned in the original inſtrument, *Willielmum Dominum de Graham*.

† The contraſt between the mode of deſigning this gentleman and Lord Graham, is very conſpicuous.

" Comite

" Comite Marchiæ de Scotia,
Domino de Man,
Domino Inſularum de Scotia."

And in another part of the ſame inſtrument the two laſt peers are mentioned thus: *Donaldo Domino Inſularum, Johanne Stanley pro dominio de Man.*

In the year 1416, William Lord Graham gets a charter of the barony of Mellenok, in which he is deſigned, *Willielmo Domino Graham.*

And the ſame Lord gets a charter of the lands of *Aldmontroſe*, dated the 4th Auguſt 1420, *Willielmo Domino de Graham* *.

From theſe facts, then, it will be fairly proved, that there were *Lords* in Scotland before the return of James I. from England in the year 1424.

* Theſe charters are on the record of the great ſeal at Edinburgh.

SECOND

SECOND HEAD.

Review of the laws of James I.

THE next point to be reviewed is the laws of James I. that from hence we may diſcover the conſtitution of the Scots parliament.

From the act 1427, it is evident that the diſtinction between Great Barons, or Lords of Parliament, and Small Barons, was eſtabliſhed before that year.

The ſtatute runs thus: *That the ſmall barons and freeholders need not come to parliament, &c. if they ſent for each ſheriffdom, according to its largeneſs, two or more wiſe men, except for the ſhires of Clackmannan and Kinroſs, each of which were to ſend but one, choſen at the head courts of the ſheriffdom, to be their commiſſars or commiſſioners in parliament, who were to choiſe one to be common ſpeaker of the parliament, to propone all cauſes to be proponed in parliament, and alſo their charges borne by ſuch in each ſhire as owed compearance in parliament: but all Biſhops, Abbots, Priors, Dukes, Earls,* Lords of

of Parliament, *and Banrents, were to be ſummoned to parliament by the King's ſpecial precept.*

This act does not make the diſtinction between the great and ſmall Barons, but ſuppoſes it to have been generally known before: for it muſt have been known either by ſome law or cuſtom introduced before that time, who thoſe perſons were who are ſtyled *Lords of Parliament*, and who were to be ſummoned to parliament, as well as Dukes and Earls; elſe how could the deſignation, of *Small Barons*, and of *Lords*, have been here ſo familiar, or of any uſe? or what certainty could there have been in ſuch indefinite expreſſions, unleſs the meaning of them had been determined? Among the acts of James I. there is no law making any difference among the *Barons*; therefore it may be fairly preſumed that the diſtinction was well known long before the reign of that King.

Of the limitations of the baronies of Scotland.

I do not propoſe to enter deeply into this

this queſtion. I only mean to ſtate a few facts upon the ſubject. The Barons muſt excuſe me for what I ſtate on this point. It is no ſecret to the public that I am intereſted in the ſubject; and it will not be ſuſpected, that any thing ſuggeſted by me will be prejudicial to their order.

The following exiſting peerages appear on record between the years 1400 and 1500.

Sommerville,
Gray,
Forbes,
Cathcart,
Semple,
Salton.

None of them were conſtituted by patent; ſo that it is impoſſible to ſay how they ſtood originally limited. I have not had occaſion to ſee the inveſtitures of the land-eſtates of thoſe peers; and though I had, I ſhould not perhaps have thought myſelf at liberty to lay them open to public view. The preſumption however is, that all the Barons of the fifteenth century held their peerages under ſimilar limitations. Beſides thoſe Lords I have mentioned, there likewiſe exiſted the follow-

ing peerages of the rank of Barons in the fifteenth century, along with ſeveral others.

" Stuart Lord Lorn,
" Stuart Lord Evandale,
" Borthwick Lord Borthwick.

In the year 1452, John Stuart enjoyed the dignity of *Lord Lorn*. On the 20th of June that ſame year, a royal charter limits " the *dominium de Lorn*, baronia de In- " nermeath, &c." Johanni Domino Lorn, et *hæredibus maſculis* de corpore ſuo legitime procreatis ſeu procreandis; quibus forte deficientibus, Waltero Stewart, fratri germano dicti Johannis, et *hæredibus maſculis* de corpore ſuo, &c.

John Lord Lorn died without *male iſſue*. He left a daughter, married to Colin Earl of Argyle: yet the peerage went along with the eſtate to Walter Stewart, the *brother* of the peer *.

This inſtance, although no other occurred in the annals of Scotland, is a convincing proof, that peerages deſcended to the brother of the perſon ennobled. Evan-

* John Stewart was the firſt peer of the family of Lorn;—a material circumſtance in this diſquiſition.

dale and Morton confirm the opinion: it is hoped the queſtion will never occur in the caſe of Borthwick.

Caſe of Evandale.

In the year 1456, Andrew Stewart was created Lord Evandale. He died in the year 1488 without male iſſue. His eſtate and his peerage deſcended to his nephew Alexander Stewart, the ſon of Walter, the brother of the firſt peer. It will not be ſeriouſly aſſerted, that this was a peerage held by a tenure different from the other coeval peerages of the country: had the peerage of Evandale been conſtituted by any deed different from the inveſtitures of the land-eſtate, that inſtrument would appear on record. The near connection between the family of Evandale and the Royal family of Stewart, warrants us to make this ſuppoſition:—the more eſpecially are we intitled to make it, that the legiſlature of this country diſcovered ſo much anxiety in aſcertaining the legitimacy of this Lord and his brother in the year 1479.

Having thus ſtated the facts with regard

gard to Lorn and Evandale, I ſhould next enter upon the limitations of the peerage of Borthwick.——By a royal charter of the Lordſhip of Borthwick, in favour of the fourth Lord Borthwick, the dignified fief ſtands limited to a ſeries of heirs *nominatim*.——Propriety forbids me to ſay more on the ſubject of this peerage. It is generally known, that the title to it is become the ſubject of litigation before an auguſt aſſembly.

If a doubt ſhould ever ariſe concerning the deſcent of any of thoſe peerages not conſtituted by patent, the only ſound principle to decide upon muſt be, the courſe of ſucceſſion of coeval peerages. In a queſtion concerning the ſucceſſion to a peerage which exiſted in the fifteenth century, a preſumption ariſes from the manner of ſucceſſion in families ennobled at the ſame period. In the families where the dignified fief ſtands limited to a certain ſeries of heirs, there cannot remain a doubt, but that thoſe heirs, one after another, are intitled to the peerage as well as to the land-eſtate; but where no limitation of the land-eſtate appears, the only rule muſt be, the prevailing courſe of ſuc-

ceſſion in ſimilar caſes. Becauſe modern patents in England generally ſtand limited to the heirs-male of the body of the perſon ennobled, we are not therefore to preſume, that ancient titles of honour ſtood ſo limited. This would be contrary to the rules of moral evidence.

In the year 1432 we have an example in England of a perſon created a Lord Baron without any limitation of heirs *.

Having thus ſtated my obſervations on this ſubject, I muſt conclude with this remark, That if the ancient peerages of this country were not *territorial*, many of our Nobility have been *uſurpers*; and ſeveral of them, at this day, only hold their dignities by a doubtful preſcription. But if our peerages were territorial, it follows, that there has been no uſurpation in the caſe; and that the preſent Noble families enjoy their dignities by unexceptionable rights.

Having finiſhed the remarks I intended on the *peerages* of this country, I take the liberty to exhibit to the reader a liſt of the

* Original patent of the barony of *Fawnhope* in the tower of London.

eccleſiaſtical

eccleſiaſtical perſons who had lands in Scotland in the year 1296. The liſt is taken from the original inſtrument in the tower of London; it is to be found an. 24. E. 1. Rot. Scot. e. 1. m. 11. and 10. Upon their having ſworn fealty to King Edward, they got letters to the different ſheriffs in whoſe juriſdiction their lands lay, ordering them to be put in poſſeſſion.

Prior Sancti Andreæ, Vicecomitibus de Edinbourgh *, Fif, Perth, Kingkerdin, Aberdeen, Forfar, and Ber.

Abbas de inſula Sancti Columbi, Vicecomitibus de Fif, Rokiſburghe, Perth, Edenbourge.

Abbas de Sancta Cruce, Vicecomitibus de Strivelyne, Dumfries, Edenbourge, Berwick.

Abbas de Coupre, Vicecomitibus Forfare, Pert.

Prioriſſa Sancti Leonardi, juxta villam

* It appears, that in the year 1543 the ſee of St Andrew's held a very conſiderable property in the county of Mid-Lothian. By a charter dated that year, the Archbiſhop of St Andrew's grants that tract of country, known by the name of *Gala-water*, to *the Lord Borthwick, and his heirs-male.*

Sancti

Sancti Johannis, Vicecomitibus Perthe, Edenborough, Haddingeton, Fif.

Prioriſſa de Manwell, Vicecomitibus de Berwick, Edinbourge, Linliſke, Are.

Prioriſſa de Northberwick, Vicecomitibus de Fife, Hadington, Edinboroughe, Berwike, Rokiſburge.

Prioriſſa de Eccles, Vicecomiti de Berewike.

Abbas de Newbotle, Vicecomitibus de Edinboroughe, Berwike.

Magiſter Walterus de Lilliſleaf, Parſona eccleſiæ de Kirkbryde, Vicecomiti de Dumfrize *.

Abbas de Dryburgh, Vicecomitibus de Fif, Berwike, Rokiſburge, Edinburge.

Petrus de Campania, Parſona eccleſiæ de Kynkell, Vicecomiti de Abirdine.

Abbas de Skanſkinnel, Vicecomitibus de Strivelyne, Edinburge, Fif, Perth.

Johannes Cornhole, Vicarius eccleſiæ de Dudynſton, Vicecomiti de Edinburge.

Willielmus Kynghorn, Parſona eccleſiæ de Liſton, Vicecomiti de Edinburge.

* It is highly probable, that this "Walterus de "Lilliſlefe," or his anceſtors, have been proprietors of the eſtate of Lilliſleaf, now *Riddel*, in Roxburghſhire.

Abbas

Abbas de Alnwyk, Vicecomiti de Berwike.

Prioriſſa de Linclouden, Vicecomiti de Dumfrize.

Adam Lamb, Parſona eccleſiæ de Polwarth, Vicecomiti de Berwicke.

Dungallus, Abbas de Sacra Nemore, Vicecomiti de Dunfres.

Henricus Lemoton, Parſona eccleſiæ de Duns, Vicecomiti de Berewyk.

Henricus, Vicarius eccleſiæ de Loghryneton, Vicecomiti de Dunfres.

Henricus Strivelyn, Parſona eccleſiæ de Upſetelington, Vicecomiti de Ber.

Willielmus, Parſona eccleſiæ de Aldham, Vicecomiti de Edenburgh.

Robertus Rameſy, Parſona eccleſiæ de Fuldene, Vicecomiti de Berewyk *.

Andreas, Parſona eccleſiæ de Goger, Vicecomiti de Edenburgh.

* As the barony of Foulden, in Berwickſhire, belonged to the Noble family of Dalhouſie, at a very early period, it is extremely probable, that the "Robert Ramſay" here mentioned was a younger ſon of that family,—and anceſtor of the Ramſays of Inverleith. In 1446, Robert Ramſay of Inverleith reſigns his lands of *Crookſton*, in the barony of Dalwolſy, in favour of "John, the ſecond ſon of "the Lord of Borthwick."

Johannes

Johannes Freſel, Archidiaconus de Sancto Andrea, Vicecomiti de Fif.

Frater Willielmus Corbet, Magiſter Domus Sancti Lazari de Harop, Vicecomiti de Edenburgh.

Stephanus Kyngorn, Parſona eccleſiæ de Pentland, Vicecomiti de Edenburgh.

Walterus, Parſona eccleſiæ Marton, Vicecomitibus de Dunfres, Berewyk.

Abbas de Jeddeworth, Vicecomiti de Berewyco.

Magiſter Hoſpitalis Sancti Leonardi de Lonweder, Vicecomiti de Berewyco.

Abbas de Kilwinnyn, Vicecomiti de Are.

Walterus Edger, Parſona eccleſiæ de Pemcock, Vicecomiti de Edinburgh.

Abbas de Keldſton, Vicecomiti de Berewyco.

Walterus Herok, Decanus eccleſiæ Moravienſis, Vicecomiti de Junervan.

Nicholaus del Camb, Vicarius eccleſiæ de Grenelawe, Vicecomiti de Berewico.

Magiſter Henricus Bauf, Cancellarius eccleſiæ Moravienſis, Vicecomiti de Inreniff.

Robertus Rameſeye, Parſona eccleſiæ de Fulden, Vicecomiti de Berwico.

Alexander Puntumby, Parſona eccleſiæ de

Kyrkum in Rennes, Vicecomiti de Wigeton.

Robertus, filius Radulphi, Parſona eccleſiæ Sancti Cuthertide Ewyteſdale, Vicecomiti de Dumfres.

Willielmus Kyngorn, Parſona eccleſiæ de Lyſteton, Vicecomiti de Edenburgh.

Johannes Cornhall, Vicarius eccleſiæ de Duddinggeſton, Vicecomiti de Edenburgh.

Abbas de Newbolet, Vicecomiti de Strivelyn.

Prior Sancti Andreæ, Vicecomiti de Clackmanan.

Andreas, Vicarius eccleſiæ de Dalgarnock, Vicecomiti de Dumfres.

Magiſter Militiæ Templi in Scotia, Vicecomitibus de Edenburgh, Berewick, Rokeſburgh, Strivelyn, Lanark, Dumfres, Dunbretan, Pebles, Wyggeton, Foreys, Elgyn, Claonanan, Rotherglen, Forfare, Kynros, Oughtrardoner, Kyncardyn, Aberden, Perth, Fif, Are, Bauf, Innrenys, Crumbantyn, Dyngnale, Innervarn, et Selkirk.

Magiſter Willilmus Cluny, Præcentor eccleſiæ de Breghenyns, Vicecomiti de Forfare.

Simon, Parſona eccleſiæ de Meddelby, Vicecomiti de Rokeſburgh.

Richardus, Parſona eccleſiæ de Linton, Vicecomiti de Edenburgh.

Edm. Letham, Parſona eccleſiæ de la Foreſte, Vicecomiti de Pelbles *.

Miniſter Ordinis Sanctæ Trinitatis et Captivorum de Berewyk, Vicecomitibus de Forfare, Berewyk, Rokeſburgh.

Miniſter Willielmus, Archidiaconus de Landoma, et Parſona eccleſiæ de Keldeleth, Vicecomiti de Edenburgh.

Ferquardus, Parſona eccleſiæ de Strobrock, Vicecomiti de Edenburgh.

Magiſter Walranus, Parſona eccleſiæ de Yetham, Vicecomiti de Rokeſburgh.

Abbas de Lundas, Vicecomiti de Berewick.

Abbas de Muros, Vicecomitibus de Berewick, Are, Jeddeworth, Pelbles, Edenburgh, Rokeſburgh, Dumfres, Northumber. et Cumberl.

* It is certain that this muſt mean "the foreſt of Etterick;" and it is very likely that this was the only church in Etterick foreſt in the year 1296.

Abbas

Abbas de Skamſkynel, Vicecomiti de Berewyk.

Prior de Wythorne, Vicecomiti de Wyggeton.

Magiſter Nicholaus de Merton, Parſona eccleſiæ de Kynnecles, Vicecomiti de Forfare.

Willielmus Spot, Parſona eccleſiæ de Tynyngham, Vicecomiti de Edenburgh.

Prioriſſa de Sancta Boyçhanna, Vicecomiti de Berewyk.

Willielmus, Vicarius eccleſiæ de Dunmanyn, Vicecomiti de Edenburgh.

Edwardus, Vicarius eccleſiæ de Wedhale, Vicecomiti de Edenburgh *.

Abbas de Donquere, Vicecomiti de Karl.

Magiſter Hoſpitalis Sancti Johannis Jeruſalem in Scotia, Vicecomitibus de Rokeſburgh, Berewyk, Foreys, Bauf, Pebbles, Clatmanan, Are, Kynros, Wyggeton, Lanark,

* Wedhale, or Weddall, was the name of that diſtrict now called *Stow pariſh*. It is not remarked for any circumſtance in hiſtory, excepting that in the fourteenth century the inhabitants of this diviſion were invaded by their neighbours of *Melroſe*. A ſmart conflict enſued on a hill-ſide in the neighbourhood of Stow, in which the inhabitants of Gala water were ſadly worſted. The country-people

Lanark, Dunfres, Elgyn, Selkirk, Dinguale, Perth, Jurenay, Strivelyn, Fif, Jurenys, Dunbretan, Kingcardin, Edenburgh, Forfare, Aberdin.

Adam, Parſona eccleſiæ de Dupply, Vicecomiti de Perth.

Bartholemeus, Magiſter Domus Sancti Germani juxta Hadyngton, Vicecomitibus de Berewyk, Edenburgh.

Prioriſſa de Hadington, Vicecomitibus de Berewyk, Fif, Hadyngton.

Johnannes, Archidiaconus Sancti Andreæ, Vicecomiti de Forfare.

Abbas de Dundernau, Vicecomitibus de Berewyk, Cumber.

Alanus, Parſona eccleſiæ de Roule, Vicecomiti de Rokeſburgh.

Prior de Karl, Vicecomiti de Are.

Bernardus Linton, Parſona eccleſiæ de Mordyngton, Vicecomiti de Berewyk.

have entirely loſt any oral account of this affair; only they ſhew the field of action, which, on account of the unnatural circumſtances attending it, is called, *The murder-cleugh.*

The cenſure of the church was inflicted on the *Melroſemen*, for their barbarous conduct in this affair.

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Abbas

Abbas de Scone, Vicecomitibus de Innernys, Forfare, Perth, Edenburgh, Aberden, Strevelyn.

Adam, Parſona eccleſiæ de Shoulden, Vicomiti de Rokeſburgh.

Patricius Gurleye, Parſona eccleſiæ de Loghorward *, Vicecomiti de Edenburgh.

Magiſter Domus Dei de Jeddeworth, Vicecomiti de Rokeſburgh.

Magiſter Willielmus Cramund, Parſona eccleſiæ de Wynchedurres, Vicecomiti de Dunfres.

Magiſter Alanus Dunfres, Parſona eccleſiæ de Dunbretan, Vicecomiti de Dunbretan.

Magilinus Rameſeye, Parſona eccleſiæ de Cocpen, Vicecomiti de Edenburgh.

Magiſter Robertus, Parſona eccleſiæ de Kynef, Vicecomiti de Kincardyn.

Magiſter Hoſpitalis Sanctæ Mariæ Virginis

* This is *Ledgertwood* in Berwickſhire, which anciently belonged to the Stewards of Scotland. The barony was granted about the year 1400 to the family of Borthwick.

The parſon of Ledgertwood, in 1296, here named, appears to have been a younger ſon of the family of Gourlay of Kincraig.

de

de Rocherford, Vicecomiti de Rokeſburgh.

Robertus Strivelyn, Parſona eccleſiæ de Cranſhawe, Vicecomiti de Berewick.

Magiſter Willielmus Dunde, Parſona eccleſiæ de Alneth, Vicecomitibus de Aberden, Bauf.

Willielmus, Parſona eccleſiæ de Barewe, Vicecomiti de Edenburgh.

Frater Willielmus Magiſter Domus Sancti Auguſtini de Seggedin, Vicecomiti de Berewyk.

Robertus Lamberton, Parſona eccleſiæ de Waleſton, Vicecomiti de Lanark.

Nicholus, Vicarius eccleſiæ de Leſſewade, Vicecomiti de Edenburgh.

Mauricius Lunel, Parſona eccleſiæ de Parva Caures, Vicecomiti de Rokeſburgh.

Willielmus, Vicarius eccleſiæ Sanctæ Trinitatis de Berewyk, Vicecomiti de Berewyk.

Willielmus, Cuſtos Hoſpitalis Sancti Johannis de Hoton, Vicecomiti de Rokeſburgh.

Magiſter Nicholaus Louthmaban, Parſona eccleſiæ de Strivelyn, Vicecomiti de Pebles.

Radulphus

Radulphus de Hauden *, Parſona eccleſiæ de Whyteſum, Vicecomiti de Berwewyk.

Magiſter Hoſpitalis Beatæ Mariæ Magdalenæ extra Berewyk, Vicecomiti de Berewyk.

Johannes Hayton, Cuſtos Hoſpitalis Sancti Leonardi de Torrens, Vicecomiti de Lanark.

Euſtachius Bykreton, Parſona eccleſiæ de Ughertermokody, Vicecomiti de Fyf.

Bartholomeus, Magiſter Domus Sancti Germani de Tranenynt, Vicecomiti de Aberden, Kyncardyn.

Magiſter Nicholaus Balmyle, Parſona eccleſiæ de Caledore, Comitis, Vicecomiti de Edenburgh.

Abbos de Dunfermelyn, Vicecomitibus de Forfare, Perth, Clacmalan, Pebles, Edenburgh, Rokeſburgh, Berewyck, Fif.

Adam Selkirke, Parſona capellæ Caſtri de Rokeſburgh, Vicecomiti de Rokeſburgh.

* This *Radulphus de Hawden* was proprietor of the lands of *Hawden*, or *Howden*, in Channelkirk pariſh, Berwickſhire.

Conenallus, Parſona eccleſiæ de Cambuſlank, Vicecomiti de Berewyk.

Th. Candidæ Caſæ Epiſcopus, Vicecomiti de Cumbr.

David, Parſona eccleſiæ de Hilton, Vicecomiti de Berewyk.

Magiſter Hoſpitalis Sanctæ Trinitatis de Honeſton, Vicecomiti de Hadyngton.

Ailmerus de Scoftlawe, Parſona eccleſiæ de Douglas, Vicecomiti de Lanark.

Robertus Gedderworthe, Parſona eccleſiæ de Kyrmyghhel, Vicecomiti de Lanark.

Johannes Stowe, Parſona eccleſiæ de Glembny, Vicecomiti de Kyncardyn in Miernes.

Robertus de Walghton, Parſona capellæ de Walghton, Vicecomiti de Edenburgh.

Abbas de Gedderworthe, Vicecomiti de Rokeſburgh.

Willielmus Kyngorn, Parſona eccleſiæ de Kelcyern, Vicecomiti de Inernys.

Andreas Garmagh, Parſona eccleſiæ de Danyot, Vicecomiti de Aberden.

David, Vicarius eccleſiæ de Foghon, Vicecomiti de Aberden.

Willielmus Wodeburn, Parſona eccleſiæ

de Mynetowe, Vicecomiti de Rokeſburgh.

Frater Thomas, Magiſter Domus Sanctæ Trinitatis de Soltre, Vicecomitibus de Edenburgh, et de Rokeſburgh, Anegos, Fyf, et Berewyk *.

Walterus

* Soltray was founded by Malcolm I. The building ſtood on the eminence of the hill now called *Soltray-hill.* Nothing now remains but a vault, the burial-place of the family of Maitland of Soltray.

In the year 1462, the whole lands belonging to the monaſtery of Soltre were granted by Queen Mary, conſort to King James II. to the uſe of the Trinity college church of Edinburgh; as appears by the following charter.

" Mary, by the grace of God, Queen of Scotland, to the Reverend Father in Chriſt, Lord James, by the grace of God and the Apoſtolic See, Biſhop of St Andrew's, our deareſt Couſin, whom we reverence with honour becoming ſuch a father: Therefore know ye, Reverend Father, That, for the praiſe and honour of the Holy Trinity, of the ever-bleſſed and glorious Virgin Mary, of St Ninian the Confeſſor, and of all the ſaints and elect of God, we, the aforeſaid Mary, with conſent and aſſent of the illuſtrious Prince and Lord, James, our ſon, the invincible King of Scotland, and in perpetual memory hereof, for the ſalvation of the ſoul of the late illuſtrious Prince James King of Scots,

Walterus Kyreyngton, Parſona eccleſiæ de Dunnoter, Vicecomiti de Kyncardin. Johannes, Vicarius eccleſiæ de Langeton, Vicecomiti de Berewyk.

Frater

our late huſband of pious memory, likewiſe for the ſouls of all the Kings and Queens of Scotland deceaſed, alſo for the ſalvation of the illuſtrious Prince our ſon James, the preſent King of Scotland, for the ſalvation of our own ſoul, thoſe of our father and mother, anceſtors, and of all the ſons and daughters ſucceeding to and deſcending from them, and for the ſalvation of the Reverend Father in Chriſt, Lord James, preſent Biſhop of St Andrew's, our deareſt Couſin, and for the ſouls of all thoſe whom conſanguinity, affinity, or benefits, have endeared to us, and of all thoſe whom we have any wiſe offended in this life, to whom we are obliged to make ſatisfaction, and for the ſouls of all the faithful deceaſed,

We hereby make, conſtitute, and ordain, and for ever found, a provoſtry, for a provoſt, who ſhall preſide in the government of the collegiate church, both in reſpect to the choir and divine worſhip performed therein, with eight prebendaries, and two boys, with a ſufficient maintenance here under ſpecified; and we likewiſe make, conſtitute, and ordain, and perpetually eſtabliſh, the provoſtry of the ſaid collegiate church of the Holy Trinity, near Edinburgh, upon the following fruits, as hereafter modified.

The provoſt of the ſaid college ſhall, for his ſubſiſtence, have the church of *Soltre*, with the burdens

the

Frater Bartholomæus, Magiſter Domus Sancti Germani juxta Hadyngton, Vicecomiti de Fif.

Willielmus Blida, Parſona eccleſiæ de Chirenſide, Vicecomiti de Berewyk.

Richardus

the ſaid church is ſubject to, viz. the vicar of the ſaid church his penſion ſhall ſuſtain three perſons reſiding there, and ſhall keep the church and ornaments thereof in good repair; and the ſaid provoſt ſhall likewiſe have the lands of *Soltre Barns*, together with the town and lands of Hangingſhaw, in the lordſhip of Herriot-muir, together with the kirk of Limpetlaw in Tiviotdale, with all the fruits thereunto appertaining; for which the ſaid provoſt ſhall be liable to pay to the biſhop and archdean the ſeveral profits they formerly received from the ſaid churches.

The firſt prebendary ſhall be called the *Maſter of the hoſpital of the Holy Trinity near Edinburgh*; who ſhall have, for the ſupport of his prebend, the fourth part of the fruits belonging to the rectoreal church of Strathmartin, in the dioceſe of St Andrew's, a two-pound land in the village of Fallahill in the lordſhip of Herriot-muir, an annuity of two merks out of the houſes in Leith which belonged to William Chines, twenty ſhillings out of the village of Erſilton in the bailiery of Lauderdale, and two ſhillings out of the houſes of John Allanſon and John Lawſon in Leith, at the terms of Whitſunday and Martinmas, twenty ſhillings out of the houſe of John Wauk in Edinburgh, five ſhillings year-

Richardus Foſſard, Parſona eccleſiæ de Kylmalyn, Vicecomiti de Rokeſburgh.

Abbas

ly out of the houſe of Thomas Biſhop of Dunkeld, ſix ſhillings and eight pence out of the village of Lawder, ſix ſhillings and eight pence out of the village of Strathmiglo, to be by us declared hereafter, as is more fully contained in the rental of *Soltre*; ten pence out of the village of Linlithgow, as is fixed in the rental; and five merk lands of Brotherſtones and Gilſton, within the territory of *Soltre*, with their limits, marches, and bounds: which Maſter of the hoſpital ſhall have the diſpoſal of all the fruits deſigned for the maintenance of the poor of the ſaid hoſpital, ſo to be limited, that he may carefully provide for all the neceſſaries requiſite, according to God and a good conſcience; and to give to the provoſt and chapter an account of the profits twice in the year, and at other times, if required.

The ſecond prebendary ſhall be called the *Sacriſtan*; who, for his maintenance, ſhall have the five-merk lands of Hill and Balerno; the five-merk land of Over Brotherſtones and Gilſton, within the territory of *Soltre*, to be limited by us as aforeſaid, with a fourth part of the profits of the rectory of Strathmartin; and the ſaid Sacriſtan ſhall have the diſpoſal of the fruits appertaining to the chapter for buying the daily proviſion for the college, and ſhall account for the ſame to the prebendaries quarterly; and he ſhall keep the church neat and clean, and ſhall have the cuſtody of the ornaments, jewels, and ſacred veſſels. He ſhall ring the bells, and furniſh

wine,

Abbas de Kelſhan, Vicecomiti de Rokeſburgh.

Frater

wine, bread, lights, and other things, according to the cuſtom of other churches.

The third prebendary ſhall be called the *Prebendary of Brotherſtones*; and ſhall have for his prebend two merks worth of land of the lands of Brotherſtones, to be appointed by us, and a fourth part of the profits of the rectory of Strathmartin.

The fourth prebendary ſhall be called the *Prebendary of Strathmartin*; and ſhall have for his ſupport five merks worth of land of the lands of Brotherſtones and Gilſton, and a fourth part of the profits of the rectory of Strathmartin.

The fifth prebendary ſhall have the title of *Gilſton*; and have for his prebend the five-merk lands of Brotherſtones and Gilſton, together with a fourth part of the profits of the rectory of Ormiſton, in the dioceſe of St Andrew's.

The ſixth prebendary ſhall be called *Ormiſton*; and he ſhall have five merks worth of land of Gilſton, and a fourth part of the profits of the rectory of the church of Ormiſton.

The ſeventh prebendary to be called the *Prebend of Hill*; and to have for his prebend the lands of Ballerno and Hill, and a fourth part of the rectory of the church of Ormiſton.

The eighth prebendary ſhall be called the *Prebend of Newlands*, in the territory of *Soltre*; and ſhall have a fourth part of the profits of the ſaid rectory of Ormiſton, &c.

In witneſs whereof, we have to theſe preſents affixed

Frater Hugo, Miniſter Ordinis Sanctæ Trinitatis de Abirden, Vicecomiti de Abirden.

Liſt of Ladies of Scotland who ſwore allegiance to the King of England in the year 1296. — Tranſcribed from the original in the tower of London.

Marjory of Grahame, — of Perthſhire.
Euſtachea of Chene, — of Banffſhire,
Dernor Gulla of Chartris, — of Dumfrieſſhire.
Eliſabeth of Langmuir, — of Weddale, part of Edinburghſhire.
Iſabella of Dundee, — Forfarſhire.
Margaret of Penhook, — Ayrſhire.
Alicea of Halyburton, — Berwickſhire.

fixed our great ſeal, in preſence of the Reverend Father in Chriſt Andrew Biſhop of Glaſgow, the Venerable Father Henry Abbot of Paiſley, Andrew Lord Evandale, Chancellor of Scotland, George Earl of Angus, Alexander Lord Montgomery, and Sir John Roſs of Halkhead, Knight, at Perth, the twenty-fifth day of March, in the year of God One thouſand four hundred and ſixty-two.

Agnes

Agnes of Burncaſtle, — Berwickſhire.
Elene of Blair, — Ayrſhire.
Elene of Pepdie, — Berwickſhire *.
Anna of Newbotel, — Edinburghſhire.
Maria of Keith, — Haddingtonſhire.
Marjory of Sydeſerf, — Haddingtonſhire.
Johanna of Eaſt Neſbit, — Berwickſhire.
Maria of Synton, — Roxburghſhire.
Alicia of Halyburton and Dirleton, — Haddingtonſhire.
Petronilla of — Edinburghſhire.
Marjory of Craiglockhart, — Edinburghſhire †.
Iſabella of — Forfarſhire.
Margaret of — Berwickſhire.
Maria of Abernethy, — Forfarſhire.
Maria Counteſs of Strathern, — Perthſhire.
Iſabella of Malenly, — Edinburghſhire.

* Of this lady the Earls of Home, Marchmont, Dunbar, and Home of Wedderburn, &c. are deſcended.

† Craiglockhart was the ancient eſtate of the family of *Lockhart of Lee*.

Helena

Helena of — Haddingtonſhire.
Alicea of Ormiſton, — Haddingtonſhire.
Marjory of Gordon, — Berwickſhire.
Elene of Duddingſtone, — Edinburghſhire.
Agnes of Craiges, — Edinburghſhire.
Margaret of Lundy, — Fifeſhire.
Mabilla of Congilton, — Haddingtonſhire.
Eve of Lovel, — Aberdeenſhire.
Sarra of Glen, — Peeblesſhire.
Eliſabeth of Roſs, — Forfarſhire.
Roſa of Dolphington, — Roxburghſhire.

A liſt of the wives of the priſoners of Scotland, in England, in the year 1296.

Agnes, — the wife of Alexander Minnerſe.
Eve, — the wife of Alexander Cumming of Badenough.
Agnes, — the wife of Richard, the ſon of David, Marſhall of Scotland.
Mary, — the wife of Duncan Scot, the ſon of Michael Scot.
Emma, — the wife of William Clephan.
The Counteſs of Roſs, — the wife of the Earl of Roſs.

The Counteſs of Athole, — the wife of the Earl of Athole.

Iſabella, — the wife of Andrew Synton of Roxburghſhire.

Aliſcea, — the wife of William of Lindſay.

It is material to obſerve, that about this period King Edward of England uſed to ſummon the Ladies, as well as the Earls and Barons of his kingdom, to attend him in war. In the year 1291, he ſummoned the Ladies of Cumberland and Weſtmoreland to meet him at Norham, (a village near the Scotch border), accoutred with horſes, arms, and all proper ſervices. The conſequences of this ſummons, it is believed, Scotland will never forget.

In the year 1294 he ſummoned a number of Ladies to his wars in Gaſcogny.

Abſtract of examples of territorial peerages.

James the third Earl of Morton had no male iſſue. James Douglas, the ſecond ſon of George Douglas, brother of Archibald Earl of Angus, married the third daughter of this Earl. It is well known

 that

that this James Douglas could not poſſibly be either the heir-male or heir-general of the third Earl of Morton.

In the year 1567, the ſaid Earl of Morton granted a charter of the earldom of Morton, together with his whole other land-eſtate, in favour of the aforeſaid James Douglas, and the heirs-male of his body, &c.

Queen Mary confirms this charter in the year 1564. Earl of Morton having died ſoon after, he was ſucceeded in his earldom by the aforeſaid James Douglas, who, as has been already obſerved, could not poſſibly be either his heir-male or heir-general. Nor is it poſſible that ever James Douglas held his peerage of Morton by any other title than the charter of the earldom aforeſaid. A ſtrict ſearch has been made among the writs of the family of Morton to diſcover if there was any patent of this peerage, unconnected with the land-eſtate, and it does not appear that any ſuch exiſts. Although, as has been already obſerved, the records of Scotland are defective in the more ancient periods; yet it is evident that they are abundantly complete in the days of *Regent Morton:*

yet

yet there does not appear in all the records of this country the moſt ſlender evidence of a creation in favour of James Douglas. Therefore, until it ſhall be proved that he was created a peer by a patent unconnected with his land-eſtate, it muſt be preſumed, that his charter of the earldom of Morton was the only inſtrument which authoriſed him to aſſume that dignity.

The ſame family of Morton affords another example of the territoriality of honours. In the year 1457, in the parliament of Scotland, the Chancellor declared the King's intention of raiſing Lord Dalkeith to a higher rank of peerage, by the title of *Earl of Morton*. In this parliament it happened, that William Lord Borthwick, the brother-in-law of Lady Dalkeith, was preſent, who had ſeldom been ſo in other parliaments. The mentioning of the erection of the dignity of Morton alarmed this Lord. He recollected, that the former Douglas, Lord Dalkeith, the huſband of his ſiſter, had deviſed the eſtate of Morton to William de Douglas, the ſon of his ſecond marriage, and the nephew of the Lord Borthwick. Lord Borthwick therefore objected to the erection of this digni-

ty, in reſpect that it might prejudice the rights of his nephew William de Douglas. Upon which the Chancellor of Scotland replied, That the intended peer ſhould not take his title of dignity from the lands and eſtate of Morton, the property of Lord Borthwick's nephew, but that he ſhould take his title of honour from lands called *Morton* in another part of the kingdom.

The family of Hay, Lord Yeſter, now Marquis of Tweeddale, affords another ſtriking example of the inſeparable connection between the *eſtate of the peer* and the *peerage*.

In the year 1590, William Lord Hay of Yeſter reſigned his lordſhip of Yeſter in favour of himſelf, and the heirs-male of his body; whom failing, to James Hay his brother-german, and the heirs-male of his body; and failing them, to a number of other heirs contained in the charter of entail following upon the reſignation. Lord Yeſter, however, paid the common debt of nature before he had got infeftment of this his new charter, leaving no heirs-male of his body.

In the year 1591, King James grants a charter,

charter, preciſely in terms of the former, in favour of James Hay, the brother-german of the aforeſaid Lord. The particular clauſe ingroſſed in this charter is ſo very material, that it muſt for ever attract the attention of the curious in a private capacity, and is every way well worthy of the notice of the ſupreme judges of the Britiſh legiſlature.

" Inſuper nos, ex noſtra ſcientia et pro-
" prio motu, pro nobis et ſucceſſoribus
" noſtris, volumus et concedimus, qua di-
" ctus Jacobus, frater germanus antedicti
" Willielmi Domini de Yeſta, heredes
" ſuæ maſculi et taliæ reſpective et ſucceſ-
" ſive, ſupra ſpecificat. omni tempore
" affuturo, habebunt, gaudebunt, et poſ-
" ſidebunt votum in noſtris parliamen-
" tis, conventionibus generalibus, con-
" ciliis, et omnes alios honores, dignita-
" tes, et præeminentias, quæ vel quas per
" dictum quondam Willielmum Domi-
" num Hay de Ziſter, alioſve ſuos præ-
" deceſſores aliquo tempore retroact. poſ-
" ſeſſæ vel gaviſæ fuerunt, ſimili modo,
" et adeo libere, ac ſi dictus quondam
" Willielmus Dominus Hay de Zeſter in

" hereditario

" hereditario feodo præfat. terrarum, ba-
" roniarum, dominiorum obiiſſet; et ac
" ſi dictus Jacobus ejus frater germanus
" ſibi in eiſdem tanquam *heredi maſculo et*
" *talliæ*, per brevia capellæ noſtræ, intro-
" iſſet."

It was about this period that the practice of making ſpecial grants of titles of honour began to prevail; and in this very charter the veſtiges of the territorial ideas moſt conſpicuouſly appear. In our days, it is a matter of no conſequence, whether the peer laſt in poſſeſſion dies infeft in his eſtate or not; the title of honour ſtill deſcends. A different notion, however, appears to have prevailed in the year 1590. Infeftment ſeems to have been neceſſary, and a connection between the eſtate and the title of the peer appears to have been inſeparable.

In the great family of Gordon a ſtriking inſtance of the inſeparable connection between the land-eſtate of the peer, and the title of honour thereon founded, appears. The firſt Gordon Earl of Huntley was thrice married. He ſettled his eſtate of *Huntley* upon the ſon of the third marriage,

riage, who accordingly ſucceeded in the eſtate, and was acknowledged by the eſtates of the kingdom to be Earl of Huntley. The peerage could not have been enjoyed by him under any other idea than as inſeparably founded upon and connected with the land-eſtate; nor is it poſſible that if he had enjoyed it by any ſeparate patent of honour, that this great family would have loſt it, conſidering how important it was, and how carefully their other numerous writings have been preſerved.

In a late claim of peerage, (the caſe of Sutherland), one of the claimants thought proper to ſet forth the following doctrine.

" The law was ſtricter in the deſcent of " peerages, than of lands. Thus the col- " lateral heir-male of the firſt grantee of " the land took the land; but the collate- " ral heir of the patentee could not take " the peerage, becauſe not of the body of " the patentee. This was ſo decided in " the caſe of Oxfoord."

When this ſtate of the caſe is examined, the ſtory ſet forth will not be found to have any foundation in the law of Scotland. Whether or not peerages went to collate-

rals

rals beyond the line of the perſon firſt ennobled, did not fall to be the ſubject of diſquiſition in the caſe of the peerage of Oxfoord in the year 1735.

That caſe ſtood ſhortly thus. In the year 1651, King Charles II. granted the dignity of Viſcount Oxfoord, and Lord Macgill of Couſland, to Sir James Macgill, *his heirs male, of tailzie, and proviſion, whatſoever.*

In the year 1735, James Macgill, the heir-male of the patentee, deſcended from the elder brother of the patentee's grandfather, claimed the peerage. He was not, however, the heir of proviſion of the patentee, that character belonging to Robert Macgill of Cranſton-Riddle. The heir of proviſion did not himſelf claim the dignity, but he oppoſed the claim of the heir-male.

On the 25th of April the claim was heard. James Macgill, the heir-male, claiming the dignity, was found to have the half of the character, but to want the other half, intitling him to take up the honours. He was heir-male; but he was not heir of tailzie and proviſion. Under

theſe circumſtances, his claim was ſet aſide. Had James Macgill been heir male, of tailzie, and proviſion, of the firſt Lord Oxfoord, the late deciſion in the caſe of Kirkcudbright, warrants us to ſuppoſe, that a judgement widely different muſt have been pronounced.

From the ſtate of this claim, then, it appears, that the Houſe of Lords had no occaſion to determine, whether or not a peerage did deſcend to collaterals not deſcended of the body of the patentee. In the foregoing pages, it appears, that in the earlier period of the hiſtory of this country the queſtion never aroſe; that, on the contrary, the heir of the dignified fief was always conſidered as heir of the honours.——Whatever judgement, or upon whatever principle pronounced, in a caſe like Oxfoord, it could not in any degree affect the ſucceſſion to the ancient Feudal dignities of this country. In a diſpute about the ſucceſſion to any ancient dignity, Oxfoord may with propriety be conſidered as a creation of yeſterday. It is the form of deſcent in ſuch peerages as Morton, Lorn, and Evandale, that muſt

rule the ſucceſſion of dignities of the ſame date *.

* It will not be diſputed but that the following Scots peerages, not conſtituted by patent, have deſcended to collaterals beyond the line of the deſcendents of the body of the firſt peer;

Evandale,
Carrick,
Morton,
Rothes,
Lorn.

Although there is no immediate connection between the following *Treaties* and the foregoing ſubject; yet as I have cauſed copy them from the original for my own curioſity, I am hopeful the curious will not think it improper that they be hereto annexed.

Conventiones

Conventiones ſuper Treugis Scotiæ.

AT Haudanſtank, the XXVI day of the moneth of October, the yher of grace M. CCC. LXXX. and XVIII.

Betwix Sire William of Borthwic, Sire John of Remorgny, Knightis, and Adam Forſtar, Squier, Commiſſairs of a hey and myghti Prince the Kyng of Scotland, on the ta part, and Sire John Buſſy, Sire Henry Grene, Knyghtis, Maiſtre William Feryby, Clerk, and Lawrence Dreu, Squier, Commiſſairs of a hey and myghti Prince the Kyng of Ingland, on the tother part,

It is accordit in the manere efter followand.

In the firſt, forthi that it was accordit and ordaint throu, myghti Princes and Lordis, the Dukes of Rotheſay and of Lancaſtre, That al manere of priſoners that has bene takin on bath the ſides, ſen the begynnyng of the trewis, tane at Lollyngame the yher LXXX and nyne, ſuld be frely deliverit, and thai that raunſon had payit, their raunſon till have bene reſtorit to thaim befor the feſt of Myſſommer laſt paſt, as it apperis plainly be the endentures tharof mad, of the qwhilk ordenance ful execution is noght mad till this tyme.

And therefor the Commiſſairs forſaid will and ordains, That ful and deu execution be made of the ſaid ordenance in this manere, (that is to ſay),

That al priſoners that are undeliverit be freli deliverit before the feſt of Alhawlowmeſſe that neſt commis; and al thai that raunſon has payit ſal have their raunſom reſtorit til thaim before Kandilmeſſe day that neſt commis.

To the fulfillyng of the qwhilk, the Erle of the Marche, Wardain of Eſt Marche of Scotland is obliſt, be his letter to Sire Henri Percy, Wardain of the Eſt Marche of Ingland, and the ſaid Sire Henry is obliſt, be his letter to the ſaid Erle, aithir for his boundis agaynis other.

And Sire Richard of Rothirfurde, Sire Willame Stewart, Knyghtis, Walter Scot, Thomas Tornebule, and Robert of Lawedre, ar Borowis for the Erlis boundis of Douglas of the mydil marche.

And Sire Thomas Gray of Heton, and Sire Thomas Gray of Horton, Knyghtis, Robert Umfravile, ſon of Mydforde, and Thomas of Knayton, are borowis for Sire Henry Percy's boundis for the Eſt March.

The qwhilk borowis ar aither obliſt till other in gud faith; and ye forſaid commiſſairs are bondin, in thair Kyng's name, for al priſoners and raunſons of withowt the boundis of the marches.

And gif it happens, that ony priſoner or priſoners be with-haldyn agaynis this ordenance, he or thai that haldis thaim ſhall be conſtreignyt be the Lordis Commiſſairs to bath the Kyngis, at thair metyng at dayis and placis under written, to deliver

deliver the ſaid priſoners frely, and aſſith thaim of the harmis that thai have ſuſteint in deffault of their deliverance efter this ordenance, and for to pay the valeu of the priſoners raunſond to the ſaid Lordis Commiſſairs, for their diſobeiſſance.

And gif ony raunſon be unreſtorit at the feſt of Kandilmeſſe forſaid, the with-halders ſal be conſtreignyt, be the ſaid Lordis, to reſtore the raunſon or raunſons to the parties, and to pay the double to the Lordis for their diſobeiſſance.

Item, It is accordit and ordaint, That all priſoners that has bene takin on baith the parties ſen the XVI day of the moneth of March that laſt was, ar, and ſal be quicly and frely deliverit, with their hors, and their harnes, reſtorand the harmis that thai did in the tyme of the takyng qwhen thai reſſave thair hors and thair harnais.

And gif ony be ranſound, and thair ranſouns payit, partie or all that ranſoun ſal be reſtorit to thaim before the feſt of Kandilmeſſe forſaid, upon the payn of paying the double in the manere forſaid.

And all priſoners that are lattin to borgh, and al men that are borewis for payment of raunſons, ſal be frely diſchargit of payment, and of entre, withouten reprofe.

Owtane, that Adam of Gordon, William the Barde, and Adam Franche, ar lattin to borgh to the ſaid Commiſſairs of Scotland, for til appere at the next day of metyng of the gret commiſſairs

miſſairs of bath reaumes, under the payne of thre M. Pounde.

Ye quhilk commiſſairs ar obliſt, in thair Kyngis name, for til appere the ſaid perſones before the ſaid Lordis Commiſſairs as hale men and ſounde, under the payn foreſaid, for til undergang and fulfil the ordenance of the ſaid Lordis Commiſſairs of it, that ſall be ſaid agaynis thaim; and alſwa that thai ſal noght do, ne ger do, agaynis the Kyngis trewis in the mene tyme.

And the cauſe is, that ther men ar noght frely deliverit, forthi that it is borne thaim on hand, throw the partie of Ingland that thai ar, and has bene commoune trew-brekars, and unmeſuret harmis has done within the tyme of this trewis, the knawlage of the quhilk the Commiſſairs forſaid thynkis maſt fittand to the foreſaid Lordis.

Item, Forthi that commoune vois is, on bath the ſidis, that Scotiſmen borne reſſauit to the feute of Ingland, and dwalland on the marches of Ingland, and Ingliſhmen borne, reſſauit to the feute of Scotland, and dwelland on the marchis of Scotland, are principale cauſe of diſtroublance of the quiet of bath the reaumes, it is accordit and ordaint, That fra hein fortawart thar ſal na Scottiſman be reſſauit to ye faith of Ingland, ne nane Ingliſhman to the faith of Scotland, the qwhileſt that the ſaid Commiſſairs mak relation to bath thair Kyngis of this article; and thane gif it lik to bath the Kyngis, this ordinance ſal be kepit endurant their trewis.

And

And tha Scottis borne men, that now ar reſſauit ſyn the begynning of thir trewis, ta the faith of Ingland, ſal be conſtreyngt to dwelle and mak reſidence on ſouth half of the watir of Tyne in Ingland before Candlemes neſt command.

And al the Ingliſh borne men reſſauit to the faith of Scotland, ſyn the begyning of the ſaid trewis, ſal be conſtreignt to dwelle and mak reſidence als for fra the marches as Edynburgh be the ſaid tyme.

And gif any on aither ſide beis fondyn dwelland, command, or gangand, nerrar the marches than the boundis foreſaid, the officers of that contre that he beis foundyn in ſal be haldin, throw vertue of thair oithis and office, to tak him or them ſwa brekand ordenance, and to deliver him or thaim to the wardains of the marche of the partie adverſe, to demain at their lyking; and this ordence till be kepit, at the lyking of the Kingis as is forſaid.

Item, It is accordit, That all marchantz, and their gudis, that has ben tane be ſe, or be land, ſen the begyning of the ſaid trewis, ſal be frely deliverit, withouten obſtakil, on bath the parties, with al gudly haſt, (that is to ſay), tha that ar unaſſithet this day.

Item, For als mykil as thair has ben mony and gret attemptance done ſyn the begyning of ther trewis on bath the ſidis, ye qwhilkis ar unredreſſit to this tyme, the reformation of the qwhilkis the ſaid Commiſſairs ne may noght, for faut of laiſure,

laiſure, at this tyme particularly, ger be refourmyd and amendit, it is accordit and ordaint, That the wardains of the marches throw thaimſelf, or throw their deputes, ſall every moneth hald certainz dayis of redreſſe, and gar refourm and redreſſe al attemptats and myſtakyngis that has ben done agynis ther trewis, after the tenure of the endentures mad, at Haudenſtank, the 16 day of Marche laſt paſt; and qwhat tyme that that endenture be reformyd, it ſal be leful to the party of Ingland til gif up qwhat bill ta thaim likis, the qwhilk ſal be redreſſit and aſſithit with the redreſſe of the foreſaid endentures; and thane, that done, the partie of Scotland ſal gif up qwhat bille that thaim liſt, till be redreſſit in the ſamyn manere.

And gif it hapins, (as God forbed), that any attemptat or attemptatz bene unrefourmyd or unredreſſid, in deffaut of negligence of the wardains of the marches, or thair deputes, on owther partie, the ſaid Lordis, at their metyng, ſal tak knawlage, and ger try in qwais deffaut that attemptatz leins unrepaired and unamendit, and ſal punice hym or thaim that bees fondyn deffautif, in fwilke manere that it be enſaumple til al other officers in tyme til come; and this ſal be done at the metyng of the gret commiſſairs before all other thyngs; and for to make cler knawyng to the Lordis, in qwais deffaut the ſaid redreſſe leins unmade, it is ordaint, That the wardains, or thair deputes, ſal

endente, at ilk day and place, the manere of thair departyng.

Item, It is accordit and ordainit, That for the mar ſikir kepynt of the trewis in time till come, that gif ony man of the ta reaume dois harme within ye tother reaume, (as takyng or ſlaghter of men, or takyng of gudis, or brynnyg of houſis, or takyng of caſtell or fortereſce), the wardains of the marches, gif he be within their boundis, fra thai be requirit, ſal be haldyn for to bring that miſdoar or miſdoars to knowledge of marche, and qwha ſa beis fondin culpable of any ſik treſpas, done in tyme til come, he or thai ſal be deliverit to the partie that has ſuſteint the ſckath, to ſla or raunſoun at thair lykyng; and caſtellis and fortereſces ſwa takin ſall be deliverit; and gif plaint be, that ony ſik miſdoar be without the boundis of the marches, the conſervatours of thair deputes, ſal be haldyn to do and fulfil in the menere forſaid, on bath the partiez; purvay'd, That the heritages on bath the ſidis ſtand in the fourme and vertue as is compris'd within the trewis.

Item, It is ordaint, That the garriſons of the caſtellis ſal nought inquitte the habitans of the countre agaynis the vertu of the trewis.

And it is alſwa ordaint, That na man ſal diſtrouble the garniſons, ne let thaim to bryng ne to by thair vittailes, ne their meubles to thar caſtellis; and that the habitans of the contre ſal do

thair devoirs and dewties to the caſtellis as the trewis wil.

Item, It is accordit, That to the fulfillyng of the articles befor written, and for othir ſpecial cauſe twochand both the reaumes, the Duk of Rothyſay, or ellis ſom other gret Lord of the Kyngis blode of Scotland, with conſel of the Kyngis of Scotland, ſal be at Edynburgh the firſt day of Marche neſt command, or ellis on the Sonday thre wikis efter Paſe thar efter neſt, qwilk that it maſt likand to the King of Scotland, of the qwhilk he ſal gar certifie to the Kyng of Ingland be the feſt of Yhole neſt command; and that the Duk of Lancaſtre, or ellis ſome other gret Lord of the Kyngis blode of Ingland, with counſel of the Kyngis of Ingland, with him, ſal be at the Newcaſtle ane of ſamyn dayis, at the lyking of the Kyng of Ingland, of the qwhilk he ſal ger certifie the Kyng of Scotland the Yhole that neſt commis.

And at qwilk day it lik to bath the Kingis, that the ſaid Lordis, with conſaille, be at the placis forſaid, it is accordit, That thai ſal ſend thair meſſages entrechangebly, aither till othir, til certifie the willis of both thair Kyngis, ſwa that, or thai depart forthir fra the marches, thai ſal mete at a certain day that be moſt likand to thai both, owther at Haudynſtank, or ellis at ſome other place that be mar likand to bath the parties, and thair do and fulfil al that to thaim pertenis of this endenture.

Item,

Item, It is accordit and ordaint, That, to the execution of ther articles aboven written, the wardins of the myddil marchis, or thair deputes, ſal mete at Gaineliſpeth on the morne after the feſt of Saint Martin that neſt commis, and ſwa fra moneth til moneth, at dayis and placis as it may be accordid betwix the ſaid wardens, or thair deputes, ay quiles that all the articles aboven written be fullely refourmyd and redreſſit, and on the Thoriſday a ſevenyght neſt folowand, the wardains of the eſt marche, or their deputes, ſal aſſemble to do and fulfil as is aboven written.

Item, It is accordit and ordaint, That na man, on nowthir ſide, ſal gif ne tak tribute ne rounſons for protections, ne aſſeverances, endurand their trewis; bot that ilk man ſal lelily kepe, and ger kepe, the Kyngis trewis withoute fraude or guyle.

Item, It is accordit, That the Kyng of Scotland ſal ger certifie the Kyng of Ingland, before Yhole that niſt commis, at qwhat day he may be fondyn in convenable place, qwher the King of Ingland may ſend his meſſages to ſee him ſwere to this trewis, and that the Kyng of Scotland may ſend til hym to ſe hym ſwere the ſamyn; and the cauſe of this delay is, that the Kyng of Scotland is occupyit in ſik placis, qwhar it war noght eſeful till the Kyngis meſſages of Ingland to come til his preſence.

Item, It is ordainit and accordit, That all manere of man in both the reumes, ſal have fredome

to follow their gudis, that beis ſtollin, or reſt fra thaim, with honde and horne, out of the ta reaume in the tohir, at thair lyking, or in what gudely manere they liſt with owten bow and ſphere; and that na man be ſwa hardy to diſtrouble in to ſik folowing on payne of tynſail of lyfe and lyme.

Alſwa it is accordit, That all ſkaithis that has been recoverit befor wardains, or thair deputes, on aither partie, ſal be payit and aſſithit be Kandilmeſſe day that neſt commis.

Yn the witnes of qwhilk thyngs, the Seel of Sire Williame of Borthnic, the Signet of Sire Jon of Romergny, and the Seel of the Abbot of Melros, procurit throw Adam Forſtar for the partie of Scotland; and the Seels of Sire Jon Buſſy, and Sire Henry Grene, the Signets of Maiſtre Willame Feryby, and Lawrens Dreu, for the partie of Ingland, to the parties of thiſe endenture enterchangebly are put the place, day, and yher foreſaid.

Sub tribus ſigillis, rubea cera expreſſis, pendentibus a caudis pergamenæ.

Super Deliberatione Priſonariorum.

AT Hawdenſtank, the XXVIII day of October, the yhere of our Lord M. C. C. C. nynty and aught.

Betwixt Sire William of Borthewick, Sire John of

of Romergeney, Knichts, and Adam Forſter, Squier, Commiſſairs of a Hey and Mythey Prince the Kyng of Scotland; and Sire John Buſshy, Sire Henry Grene, Knychts, Maiſter William Fereby, and Lawrence Drew, Squier, Commiſſairs of a Hey and Mychty Prince the Kyng of Ingland.

It is accordit in the manere after followand.

In the firſt vyu it appers be an endenture made, at the place foreſaid, betwix Mychty Princes and Lordis, the Dukes of Rotheſay and of Lancaſter, the xvi day of Marce laſt paſſit, that all manere of priſoners that has bene taken on bathe the ſides ſyn the beginning of the trewes, tane Lewlynghame the yhere, &c. auchty and nyne, ſuld be quietly and frely deliverit.

Of the qwhilk Sire John Hamylton of Cadyaw, Sir John of Hamylton of Finyngalton, and ſyndry marchands of Scotland with thaim, beand taken in a ſhipp thruch William Gednay and his company, and accuſit, That you ſuld have dane agaynes the trewis, war and ar frely deliveryt, notht agayn ſtandand the accuſation pretendit agaynes thaim.

Qwarefore it is ordaynd and accordit, thruch the Commiſſairs foreſaid, That yere ſhippe, and all your gudes, ore elles the price thereof, ſal be frely delyveryt to them in yis maner; the gudes that came to the Kyng's officers of England, the Kyng ſall garr pay and reſtore, and ye takers ſal be conſtreynet be your Kyng, to reſtore the ſurpluis efter, as the plaintiffs may prove, ore ell

deliver

deliver your bodys fore the gudes qwar you faill of payement.

Item, Sire Ph. of Stanely, Capitaine of Roxburgh, gave a bille, Pleynand of the Erle Son of Douglas, and ſundry men in the cumpany with him, of the qwhilke Sire Williame Stewart was ane, hat you had broken the brig of Roxburgh, brynt yair town, and ſpuylit that broken yair welles, and brynt their hay, and their fuell, to thair ſcathes of twa thowſand pund;

And forethy, that the ſaid Sire William was preſent on the feylde, he was conſtreynit tyll anſwer tyll the ſaid compleynt; to the quhilt he anſwerit, ſayand, That the brekying of the brig, the brynning of the hay and the fuel, hys Lorde dyd of purpoſe, thynkand, that he micht do that lauchfully, notht agyn ſtandand the trewis; forethy, that al was and ys Scoct mennys heritage; nevertheleſs, qwhether it be fully juſtifabyle, or nocht, the cannocht ſay; bot gif it beys determynt be the commiſſairs, an attemptate againe the trewis, it ſal be amendit as it aw to be.

The brennyng and the ſprething of the town he graunts till amend, as a thyng done agayne his Lord's defenſe, and alſa agayn the trewes.

The qwhilk anſwer herd, the ſaid Commiſſairs has referrit the knallage of this article to thair Lordes for the heyneſs of the mater.

Item, How ſwa that it is accordit in the grete indenture, That al maner of perſons, on bath the ſydes, ſud be deliverit by Alhalowmeſs next command;

command; the qwilk the commiſſairs forſaid are obliſt for all perſons beand without the boundes of the marches, for als mykell as perſons may be with halden infeir marches of bathe the rewmes, the qwilk peraudventur may nocht fathfaylly be deliveryt.

It is accordit, that thaia gair all pearſons of without the boundes, be deliveryt with all gudely haſt, that thai may ſa that thai be deliveryt by Yhole next comand at the lattaſt.

In the witneſs of the qwhilk things, the Sele of Sire William of Borthwick, the Seignet of Sire John of Romergny, and the Sele of the Abbot of Melroſs, procurit throw Adam Forſter for the partie of Scotland; and the Selis of John Buſſy and Sire Henry Grene, the Seignets of Maiſter William Fereby and Lawrence Drew, for the partie of Ingland, to the partiez of this indenteris interchangeably are to put at day, place, and yhere forſaide.

Sub tribus ſigillis, cera rubea expreſſis, pendentibus a candis pergamenæ.

De appunctuamentis ſuper Treuga antedicta.

AT Clochmabaneſtane, the VI day of November, the yere of Grace M. C. C. C. nynty and aught.

Betwix Sire William of Borthwick Knycht, and Roger of Gordown Sqwiere, Commiſſarez of the

the Hey and Mychty Prince the Kyng of Scotlande on the ta parte, and Sire John Buſſie and Sire Henry Grene, Knychtez, Maiſtre Willame Firiby Clerc, and Lawrence Drewe Squiere, Commiſſaries of the Hey and Mychty Prince the Kyng of Ingland on the tothir parte.

It is accordit in the manere efter followand.

In the firſt, forthly, that it was accordit and ordainit, through Mighty Princes and Lords, the Dukys of Rotheſay and of Lancaſtre, That all manere of priſoners that has bene takyn on bath the ſyds ſyn the begynning of the trewis, takin at Lollynhame, the yere and the laſt auchty and nine, ſuld be frely deliverit, and thai that ranſowne had pait the rawnſon til half bene reſtorit to thaim before the feeſte of Mydſomer laſt paſt, as it appers plainly be the endentures thereof made; of the qwilk ordenance ful execution is nocht made til this tyme.

And thairfore the Commiſſairs forſaid will and ordanyt, That full and due execution be made of the ſaid ordennance in this menere; (that is to ſay), that al priſoners that are undeliverit be frely deliverit before the feeſte of Saint Martin that neſt commis; and all thai that raunſon has payit, ſal haf their raſom reſtorit til thaim before the faſtyngange Sonday that neſt commys.

To the fulfilling of the qwils, Sire John of Johnſtowin, Sire John of Corlel, Sire William Stewarte of Caſtel-mylke, Knychts, Harbarte of Corry, John of Carruthers, John of Glendowyne, Symown,

Symown of Glendowyne, Nicol Litel, Alexander Armſtrong, and William Nykſon, are borrowis for the Erlis bounds of Douglas for the weſt march of Scotland.

And the ſamyn Knyghts and Sqwiers has heytht, before the ſaid Commiſſairs, be thare gude ffaithis, that thai ſal well and trewly kepe their preventz trewis that are accepts by bathe the Kyngis, and that thai ſal redreſs and gar be redreſſyt, wele and trewly, efter thair lele powair, all the attemptats done ſyn the begynnynge of the ſaid trewis, takyn at Lollynghame, without frawde or gyle, efter the fourme and the effect of the ſaid endenturs, made at Hawdenſtank the XVI day of March laſt paſſit, be the foreſaid Duks of Rothyſai and Lancaſtre, and the fourm of the trewis forſaid; and at thai ſal, with thair poware, lett al men of the party of Scotland that wuld paſſe thrw thair bownds to do harme in Ingland or til any Ingliſhman.

And John of Skelton, Lewtenant of the weſt marche of England, in borgch in the
of the ſamyn marche ſemblably to do, and fulfill the ſaid ordennance.

And Sire Peris Tilzoll, Sire Willame Culwey, Sire Willame of kee, Sire John of Simivili, Sire William of Swynburng, and Robert of Umfraville, Knychts, Willeme of Stappilton, Giffray Tiliol, Rolland the Vaux, John of Dalmon, Richart of Salchela, Thomis of the Sands, Dikker of Skelton, and Willame of Temudulawe,

ere borrowis for the ſamyn bownds, to do and fulfil that that to thaim longys in this marche at thair lele poware, without fraude or gyle.

And the ſamyn Knychts and Squiers of Ingland has heytht, before the ſaid Commiſſairs to be thaire gude faythe, That thai ſal weli and trewly kepe thir preſentz trewis, that ar acceps by bath the Kyngs, and at thai ſal redreſſe, and gar be redreſſyt, wele and trewly, efter thair lele poware, all attemptats ſyn the begynynge of the ſaids trewis takin at Lollynghame, withouten fraude or gile, efter the fourme and the effect of the foreſaid endenturs madz at Hawdenſtanke the XVI day of Marce laſt paſſyt, be ſye forſaidz Duyks of Rothiſſay and of Lancaſtre, and the fourme of the trewis forſaid; and that thai ſal, with thair powair, lett all men of Ingland that wald paſſe thrw thair bownds to do harme in Scotland, or to any Scottis man.

And the foreſaid Commiſſairs ar bundyn, in thair Kyngis name, for all priſoners and ranſowns of without the bownds of the weſt marche.

And gif it happens that ony priſownere, or priſowners, be with-halden agaynis this ordenance, he, or thai that halds yaim, ſal be conſtreynt be the Lords Commiſſairs to baith Kyngs, at thair metyng, at day and place that thai ſal and ordaine at thair metynge at the eſt march, before thair departing, for to be at the weſt march n thair awyne perſowne, or be ſuffiſand commiſſairs of thair Kyngis, to deliver the ſaidz priſoners, and

aſſythe

aſſythe them of the harmes that thai haf ſuſtenyt, in defawte of their deliverance, efter this ordenance, and for to pay the value of the priſoners ranſown, to the ſaid Lordis Commiſſairs, for thair diſobeyſſance.

At qwilk daiz and place, the ſaid Lords, or the ſaid Commiſſairs, ſal redreſs, and gar be redreſſyt, all manere of treſpaſſe, and attemptatz done agayns the trewis, and the fourme of the endenturs made at Hawdenſtank the xvi day of Marce and the xxvi day of October laſt paſſyt.

And gif ony ranſown be unreſtorit at Faſtingange Sonday forſaid, the withaldare, or the withaldars, ſal be conſtreinyt, be the ſaid Lords, to reſtore the ranſown, or the ranſowns, to the partize, and to pay the double to the Lords for thair diſobeyſſance.

Item, It is accordit and ordanyt, That all priſonners that has bene takyn on bath the partis ſyn the xvi day of the month of Marce at laſt was, er and ſal be qwicly and frely deliverit with thair hors and yair harneſs, reſtorand the hermes that thai dyd in the tyme of thair takying qwen thai reſſave thair hors and their harneſs.

And gyf ony be ranſown'd, and their ranſown pait party or al, that ranſowne ſal be reſtorit to thaim befor Faſtgang Sonday forſaid, in the payne of paying the double in the manere foreſaid.

And al priſoners that are lattin to borgh, and al men that arr borrowis for payment of ranſowns,

ſal be frely diſchargit of payment, and of entre, withoutin reprofe.

And al obligations, ſeurtes, and promeſſes, generalle or ſpeciale, made for priſoners or ranſons, and al othir chargs that is put to thaim be ony colour of band or borowe, becauſe of thaire takying, ſal be voyde, and want thair ſtrength and effect.

And wa ſa dois agayne this ordenance, he ſal be conſtreygnt be the ſaidz Lords, or their Commiſſairs, to pay the double to them of that that he aſk.

Item, Forthy that commowne voiciis, on bathi the ſyds, that Scotis-men born reſavyt to the fewte of Inglande, and dwelland on the marches of Ingland, and Inglis-men borne, reſſauyt to the fewte of Scotland, and dwelland on the march of Scotland, are principale caws of the diſtrowblance of the quiete of bathe the rewmez,

It is accordit and ordanyt, That fra hyn forwarde thare ſal na Scots man be reſavyt til the fewte of Ingland, ne nane Inglis man til the fewte of Scotland, the qwils that the ſaid Commiſſairs mak relation til bath thar Kyngs of this article;

And thain, yf it lik to bath the Kyngs, this ordenance ſal be kepit endurant the trewis;

And that Scottis borne men that now ar reſſavit ſyn the begynnyng of the trewes til the fewte of Ingland, ſal be conſtreignyt to dwelle and mak reſidence als fer fra the marche as the bowis in Ingland, before Candilmes neſt command;

And

And all the Ingles-borne men reſſavyt to the fewte of Scotland ſyn the begynnyng of the ſaidz trewes, ſal be conſtreignyit to dwelle and mak reſidence als fer fra the marches as Pebles, Crawfurd, or Corſnecon, be the ſamyn tyme;

And gif ony of aither ſyde be fundyn dwelland, command, or gangand, nerrer the marches thane the bownds forſaid, the officers of that contre that he beis fundyn in, ſal be haldin be the vertue of thäir othys and office, to tak hym or thaim ſwa brokand this ordennance, and to deliver hym or thaim to the wardanys of the marche of the partie advers to demayne at thair likyng.

And this ordennance is to be kepit at the likyng of the Kyngs as is forſaid.

Item, It is accordit, That al merchands and thaire guds, that has bene takin by ſee or by lande ſyn the begynnyng of the ſaid trewis, ſal be frely deliverit, withouten obſtacle on bath the partize, with all gudly haſt, (that is to ſa), tha that ar unaſſyth this day.

Item, For alſmeikl as thare has bene mony and gret attemptatz done ſyn the begynnyng of their trewez, on bath the ſyds, the qwilk ar unredreſſyt to this tyme, the refourmation of the qwilk requers great laiſere and tyme, the qwilk the ſaid Commiſſairs ne may notht at this tyme, partic'larly ger be reformyt and amendit.

It is accordit and ordanyt, That the wardanys of the marches thr'w thaim ſelf, or thr'w thair deputz, ſal everilk moneth hald certene daiz of redreſſe,

redreſſe, and ger refourme and redreſs al attemtatz and myſtakyngs that has bene adone agenez thir trewiz efter the tennour of the endenturs, made at Hawdenſtank the xvi day of March laſt paſſyt.

And gyf it hapyns (as God forbede) that ony attemptate, or attemptats, bene unreformyt or unredreſſyt in defawte or necligence of the wardanys of the marchez, or thair deputz or owthir partie, the ſaidz Lords, or the ſayd Commiſſairs, at their metyng at the eſt marche, ſal tak knawlage and ger try in qwais defawte the attemptatz levys unreparit and unamendit, and ſal punyſs hym or thaim that beis fond in defawtife in ſwilk manere, that it be enſawmple til al uther officers in tym to com: and this ſal be done at the metyng of the Grete Lords, or thair Commiſſairs, befor al othir thing.

And for to mak clere knowyng to the Lords in qwais defaute the ſaid redreſs levys unmade, it is accordit, that the wardanys, or thair deputz, ſal endent at ilk day and place the manner of thair departyng.

Item, It is accordit and ordanyt, That for the mar ſiwirr kipyng of the trewis in tyme to come, that gyf any man of the ta rewme, (as takyng or ſlaghter of men, or takyng of guds, or brynnyng of howſes, or taking of caſtel or fortreſs), the wardanys of the marche, yf he be within thair bownds fra thai be requerit, ſal be haldin for to bryng the myſdoer, or myſdoers, to the knawlage

lage of the marches; and qwa ſa beis fundyn culpable of ony ſylk treſpas done in tyme to come, he or thai ſal be deliverit to the party that has ſuſtenyt the ſcath, to ſla or ranſown at thair likyng, and caſtel and fortreſs ſwa takin, ſal be deliverit;

And gyf plaint be that ony ſilk myſdoer be withouten the bownds of the marche, the Conſervatours, or their deputs, ſal be haldin to do and fulfil in the manere forſaid of bath the partize; purvait that heritages on bath the ſyds ſtand in the fourme and vertue as is compris'd within the trewes.

Item, It is accordit and ordanit, That to the execution of the articles abovyn writtin, that the wardanys of the weſt marche of Scotland, or his deputes, ſal mete at Clowthmabaneſtan for Galway, Nythyſdale, and Annalerdendale, with the wardane of the weſt marche of Ingland, or his deputes, the Thoryſday the XVI day of November, for to redreſſe and refourme al attemptats done agayne the vertue of their trewis, efter the fourme of the ſaidz endenturs, and ſa fra moneth to moneth, at daiz and places to be accordit betwix the ſaidz wardenez, or thair deputz, qwilez al attemptatz be fully redreſſyt, and at the ſame day and place thai of Cawfourd-mure ſal appere to do, and mak redreſſe in the manere forſaid.

And in the ſemblable manere ſal the ſaidz wardanes, or thair deputz, aſſemble at Kirkander the Mounownday the XVIII day of this ſame moneth, for Eſkdale and Lyddalyſdale.

And

And thai of Tyndale and Ryddyſdale ſal mete at the ſame place of Kircander, with thai of the weſt marche of Scotland, at al thair daiz of redreſſe, fra Mychelmas to Qwyſſinday, and fra Qwyſſinday to Mychelmes, thair daiz of redreſſe ſal behaldein at Creſshope bryg.

Item, It is accordit by the Commiſſairs forſaidz, That the deputes of the Erle of Douglas, Tevydale, and Jedeworth foreſt, ſal aſſemble with the deputes of the wardane of the weſt marche of Ingland, the day, the xxvi day of this moneth of November, at the ſaid Creſshope bryg and ſwa fra moneth to moneth, to refourme and redreſs al attemptats done on bath the ſyds.

And the foreſaid Commiſſairs of the Kyngs of of Scotlande has heythit, in their Kyngs name, that at the ſaid day and place, and ſa fra moneth to moneth, the forſaid deputes of Tevydale and Jedworth foreſt, ſal appere, and do redreſs of al attemptats, after the fourme of the trewes and the ſaidz endenturs; and in the ſame wyſe the Commiſſairs of Ingland has heytht to be done on thair ſide.

Item, For alſmekil as the Commiſſairs of Scotland has allegyt, that deu reformacion and redreſs of attemptatz has notht ben done before this tyme; for that that on the party of Ingland has bene grete changyng of wardanys on the weſt marche ſyn the tyme of this trewis, the qwilk wil notht redreſs, but ilke man for his awyne tyme;

It is grantyt be the Commiſſairs of Ingland, that the lewtenant of the weſt marche of Ingland ſal haf ſuſſizand poware, alſwele of his legys Lord the Kyng of Ingland, as of the wardane of the ſaid weſt marche, within twa moneths after this day, for to repair and redreſs all manere of attemptatz langand to his bownds, ſyn the begynnyng of this trewes;

And alſwa that, be the ſame tyme, thair ſal be ordanyt deputz of the Conſervatours to mete at ilke day of redreſs, what the deputz of the wardanys to do, and fulfil that y to thair office withoutin the bownds of the marches.

Item, It is ordanyt and accordyt, That al manere of men of bath the rewms, ſal haf fredome to folowe thair gudes that beis ſtollen or reſtit fra thaim, with hunde and horne, owt of the ta rewme into the toyir, at thair lyking, or in qwhat gudely manere that thaim lyſte, withoutin bowe and ſpere, and at na man be ſa hardy to diſtroble ony man in ſyk folowying, of payne of tyſale of lyfe and lyme.

Item, It is accordit, That al ſcathis that has bene recoverit before wardayns, or thair deputez, on aythir party, ſal be pait and aſſytht by Faſtyngang, Sonnonday forſaid.

Item, It is accordit and ordanyt, That na man, on nouthir ſyde, ſal gyf ne tak tribute ne ranſowne for protections, ne aſſurances endurant this trewes; but at ilk man ſal lelyly kepe and ger kepe the Kyngs trewes without fraud and gyle.

In the witneſs of the qwilk things, the ſeele of Sire William of Borthwike, and the ſignet of Roger of Gordownz, for the party of Scotland, and the ſeel of Sire John Buſshy and Sire Henry Grene, and the ſignetz of Maiſtre Willame Ferly and Lawrence Drewe, for the party of Ingland, to the partize of this endenturs entrechangiabley are put, the day, yhere, and place forſaidz.

Sub ſigillo, rubea cera expreſſo, pendente a cauda pergamenæ. Alterum deſideratur.

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